

K. M. - v. - S. (W. - m.) 15 Nov. 1742
THE
T R Y A L

BETWEEN

518. C. 2.
Sir *William Morris*, Baronet,
PLAINTIFF,

AND

Lord *Augustus Fitz-Roy*,
DEFENDANT,

FOR

CRIMINAL CONVERSATION

WITH THE

PLAINTIFF'S WIFE,

AT THE

Kings-Bench Bar, Westminster.

L O N D O N :

Printed for *J. Huggonson*, in *Sword-and-Buckler*
Court, over-against the *Crown Tavern*, on
Ludgate-Hill. 1742. Price One Shilling.

PREFACE

THE unhappy Lady, who was the
Subject of the following remarkable
Trial, was of a noble and ancient
Family, and was distinguished
for great and various Actions. She was Lady
Dunblow, daughter of Thomas Earl
and Marquis of Winton, and Sister to the
late unfortunate Duke of Winton.
The * Duke, when but a few Years of
Age, and in his Father's Power, without
his Consent, was married to a Daughter
of the late General H—, which en-
questionably was a very great Abandonment
to the noble Youth's Relations, one being
their Apparent to an Estate of 17,000 l.
Year, and the other without any Fortune at
all.
It is beyond all Doubt, that there were
many Means used, in order to decoy this
young Nobleman into that Match: For, as
to his natural Capacity and liberal Educa-
tion was very great; yet, in his tender Years,
we find, he was not sufficiently guarded



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PREFACE.

THE unhappy Lady, who was the Subject of the following remarkable Tryal, was of a noble and antient Family, many Ages distinguished for great and virtuous Actions. She was Lady L—y, youngest Daughter of Thomas Earl and Marquis of *Wh—ton*, and Sister to the late unfortunate Duke of *Wh—ton*.

The * Duke, when but Seventeen Years of Age, and in his Father's Life-time, without his Consent, intermarry'd with a Daughter of the late General *H—lm—s*, which unquestionably was a very great Mortification to the noble Youth's Relations; one being Heir Apparent to an Estate of 17,000 *l.* a Year, and the other without any Fortune at all.

It is beyond all Doubt, that there were many Means used, in order to decoy this young Nobleman into that Match: For, altho' his natural Capacity and liberal Education was very great; yet, in his tender Years, we find, he was not sufficiently guarded against

* Their Lord *W—cb—don*.

gainst the Designs of those Persons who secretly negotiated it.

The Marquis, being greatly exasperated at so wrong a Step, the latter End of the Year 1714, (he being then Lord P——vy S——d) attempted to get an Act of Parliament passed to annul his Son's Marriage; which was rejected. That Disappointment, it was conceived, forwarded the Marquis's Death: For, in *April*, 1715, he died, but first made his Will, and, for his Son's Disobedience, left from him as much of his Estate as he could; which occasioned the Fortune of the two Ladies, his Daughters, to be greatly increased. And the Marquis, being tender of his Daughters, appointed the late Duke of K——g——n, the late Earl of C——rl——fle, and the late Lord L——chm——re, Executors and Trustees of his Will: And, surely, no Care or Expence could be wanting in the Education of the Lady L——y.

She was generally admired for her refined Understanding, Wit and Beauty; and at the same Time was intitled to upwards of thirty Thousand Pounds Fortune; which was accumulated by the Savings of her own Fortune, and by the Bounty of the Crown, who generously granted her the Moiety of the Reversion of the late Duke's Estate, after his Out-Lawry.

The Lady's Virtues, noble Birth, and agreeable Personage, were the chief Inducements for the * Plaintiff (in this Action) to Address

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* Sir H——m M——r——s, Bart.

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her for Matrimony; he had no lucrative Views in desiring the Marriage, which the Letters in the following Arguments, wrote by him to her, will evince; and the large Fortune he was possessed of puts it out of all doubt, that he marry'd her for real Love.

The Plaintiff, as is observed in the following Sheets, was an agreeable Gentleman, and capable of rendering the marry'd State comfortable to any Lady; and it is very well known, that he proved one of the most affectionate and indulgent Husbands; and she, on the other hand, was, for many Years, well deserving of it.

But, alas! how frail is human Nature! for, notwithstanding the happy Situation she was placed in, she fell a Victim to the crafty Snares of the * Defendant.

After this Tryal an Act of Parliament passed totally to annul the Plaintiff's Marriage with this Lady.

It has been reported, and probably with good Foundation, that the Defendant, who made the *Solemn League and Covenant* with the Lady, as he term'd it, and which is hereafter set forth at large, did not keep up to his Promise; for that the Lady, being separated from so good a Husband, and forsaken by the Defendant, fell into inconsolable Grief, which ended in her unhappy Death; and this Conjecture is not very improbable, if you'll observe the Defence the Defendant made on this Tryal:—For he, instead of attempting

* Lord A—g—ß—s F—te-R—y.

tempting to vindicate the Lady's Honour, and make his own Innocence appear, makes his Defence by blackening her Character, suggesting, that, before he became acquainted with her, she had prostituted herself with debauch'd Company. This kind of Behaviour in the Defendant should be a Warning to the *fair Sex*, not to put their Virtue and Character in the Power of any Person whatsoever.

And altho' there are many Passages, in the following Arguments, which may excite Mirth, yet, the whole Case being fully considered, I am of Opinion it will command the greatest Compassion from every virtuous Mind, for the unfortunate Lady, and the Plaintiff her then kind Husband; at the same Time creating the greatest Abhorrence of the Defendant, as being the utter Ruin of the Lady.

T H E

P R I N T E D
[REVERSED]

T H E
T R Y A L

B E T W E E N

Sir *W---m M---rr--s*, Bart. Plaintiff,

A N D

Lord *A--- F--z--r--y*, Defendant,

F O R

CRIMINAL CONVERSATION with the Plain-
tiff's Wife.

MR. ———. May it please your Lord-
ship, and you Gentlemen of the Jury ;
M---rr--s is Plaintiff, and *F--z--r--y* De-
fendant. The Declaration sets forth,
That the Defendant, on the — Day of —, in the
— Year of the Reign of his present Majesty, and on
other Days betwixt that Day, and the — Day of
——, then next following, with Force and
Arms, at the Parish of —, in the County of
—, did debauch and carnally know Lady *L—*, the
Wife of the Plaintiff ; whereby he was depriv'd of
the Comfort and Society of his said Wife, and did
other Enormities to the Plaintiff, to his Damage of

B

— And

——: And therefore I hope, when this is prov'd, that you will give a Verdict for the Plaintiff.

Mr. ———. My Lord, and you Gentlemen of the Jury, I am Counsel for the Plaintiff, who hath brought this Action against the Defendant for infamous Commerce, or criminal Conversation, with his Wife; which, I may venture to say, is a Crime the most injurious and scandalous, cruel and barbarous, that can be introduced into a Family; and for which no Compensation can be made to the Person injured, equal to the Injury he hath sustain'd. Among the many Miseries and Calamities that a Transaction of this Kind brings on the Person injur'd, even this Prosecution, at this Instant Time, is none of the least; by Reason of his being under a Necessity to expose to the Public the Misconduct and Failings of a Person who stands in the nearest Relation to him; and for whom he had the greatest Kindness, and with whom he had the nearest Intimacy; and who formerly had likewise fixt her Affections on him: I say, that even this Calamity must render the Case extremely afflicting, especially to a Gentleman of a noble and generous Spirit, to lay open before you a Thing of this Nature: But as there is an absolute Necessity for so doing, in order to the Preservation of the Family, and receiving such Satisfaction and Justice as the Law allows, by Way of Punishment for such an heinous Offence and Injury, I shall lay the Case briefly before you.

This Gentleman, M—, was married to Lady L—y sometime in the Month of —, and he was endued and furnished with every thing, one would think, that could contribute to the Happiness of any Woman; such as an agreeable Person, a plentiful Fortune, and who had the greatest and strongest Affection for, and indulg'd her in every Thing that she could desire. Agreeable to the Plaintiff's just Expectation, he

he and his Lady liv'd very happily together for some Years; and, indeed, one would wonder how it could otherwise be, or that their Happiness should ever have been disturbed, or that the Lady, who had every thing to make her Felicity continue, should, at last, abandon her Honour; be regardless of her Husband; and alienate her Affections from him: But the Wonder will, in a great Measure, cease, when you see the whole Scene laid before you, of the Defendant's constant and unwearied Insinuations, in order to ensnare and vitiate this Lady, and betraying her at last. I shall therefore endeavour to open and lay before you this infamous Transaction, as will appear from our Evidence, with as much Decency as I can: And here our Evidence may be considered in three Parts; 1st. The Assiduity of the Defendant in his attempting to gain the Affections of this unfortunate Lady, and getting into Intimacy with her: The 2^d. Part will be to prove the infamous Crime itself, with which he is charged in the Declaration; which, if it comes up to my Instructions, there will not be the least Room to doubt of his being guilty of it: And the 3^d. Part of our Evidence, will consist in some very strong and notorious Circumstances, which serve to confirm his being guilty.

As to the First, It will appear to you, that, from Time to Time, for a long Time together, the Defendant was constantly an Attendant on this Lady, in all public Places; such as Plays, Opera's, Assemblies, and other public Places of Resort; and was very particular in his Behaviour towards her, by addressing himself entirely to her, and leading her to her Chair or Coach, with other Acts and Circumstances of his Gallantry; and though there might not appear any thing then to be criminal in such kind of Conversation and Behaviour; yet, when the Consequence thereof becomes fatal, as in the present

Case, then it plainly shews, even to Conviction, with what Intent and Views the Defendant practis'd these Gallantries and Acts, which were to insinuate himself into her Esteem, in Order to seduce her at last. After the Defendant had thus ingratiated himself, and gain'd her Affections, according to his Expectation, you will find a greater Intimacy happened afterwards, as the Consequence of his Insinuation. The Circumstances of this Intimacy are very extraordinary; I think the Lady had a young Gentlewoman in the Family, who attended her as her Companion; by whose Evidence it will appear, that the Lady's Virtue was, or could be soon and easily shaken, and that she gave my Lady such fair Warning of the Defendant's Design, as might have alarmed her; for, I think, about the — Day of ——— when the Defendant, and the Lady, and this young Gentlewoman were together, in my Lady's House in (D) frequent Pretences of Occasions were laid hold on to send this young Gentlewoman out of the Room; one Time to fetch a Snuff-box; another Time to order the Tea-Things to be taken away, though there was a Bell in the Room, and proper Servants in Readiness to do such Offices; and who always did such Things, except at this Time, when the Defendant and the Plaintiff's Wife wanted to be private by themselves. This sending her out of the Room, was observed by one of the Plaintiff's Family, who desired her to return into the Room, and not to stir out of it, till the Defendant was gone, which she did; and it was resent'd and taken Notice of by the Lady, who said to the Defendant, *This young Gentlewoman is out of Humour because you are here.* To which she answer'd; *That she was, indeed, concern'd about it.* To which the Lady, replied; *That if it was not for ugly Ladies and Prudes, others would not be censured.* Upon which, the young Gentlewoman said, (and which will be found to be too true, and

is a very good Observation) *That though Men had Inclinations often to make Libertines, or to make too free with the Female Sex; yet they were as much Prudes at the Heart, as any ugly Woman could be:* And when this young Gentlewoman saw such Doings, she thought that she might suffer in her Reputation; and therefore left the Lady's House: And, I must say, that it had been well for the Lady if she had taken the young Gentlewoman's Hint or Warning about the Defendant's dishonourable Design: But, instead of doing so, you will find, by another young Gentlewoman's Evidence, that she despised it; for, about a few Days afterwards, the Lady, with this young Gentlewoman along with her, went to (E) in the County of —, the Seat of —, where she continued about — Weeks; and on their Return to (F) the Defendant's Servant came to meet them about a few Miles from (H) and rode round the Coach or Chariot, and looked into it, with a great deal of Care, and rode back again. On which, the Lady asked the young Gentlewoman, *If she knew who that was?* who answered, *That she had seen him before:* Yes, says the Lady, *and so have I too.* Now, you will see the Reason of the Defendant's Servant riding round the Coach, from what follows; for as soon as the Lady's Coach came into the Yard, at the Crown in the said Town, the Defendant appeared, and spent the Evening with her there, and supped with her in the Parlour by themselves, and staid up alone together till about Two or Three in the Morning; though it will appear likewise, that they staid up together other Times, till Four or Five in the Morning. Surely these Things will not be reckon'd on the Foot of common Visits: I think not; for these Actions are enough to ruin the Character of any Woman; and when he could persuade her to do such Things, it was easy for him to bring her to do any Thing.—Then, the next Day, the
Lady

Lady went to her House in (I) where she had not been long ; I think, no longer than the *Monday* thereafter, till the Defendant came there, and staid up with her till about Four or Five in the Morning. It will likewise appear to you, that he was often with her at very unseasonable Hours ; and that there were particular Orders given to the Servants to watch the Door, and that none should interrupt them, nor come into the Room, till they had first knocked at the Door. You will likewise find, with Relation to these Visits, that though she was undress'd and going to Bed ; yet, when the Defendant came to her, at such unseasonable Hours, she would immediately dress herself, and come down to him ; and that she ordered her Maid-Servant to go up to one of the Footmen, who were then both in Bed, and get the Key of the Wine-Cellar from him ; and to desire them not to get up ; and that this Maid-Servant often went into the Room, and found the Defendant and her Ladyship always sitting close together on a Couch. Their Criminal Familiarity must, in Part, be gathered from Circumstances of such kind, because it is hardly possible to conceive, that any could be so far abandoned, as to do it in the Presence and Company of others, tho' you will find that there will not be wanting Evidence enough to prove it, as far as can be reasonably expected : Again, you will find that there is one Circumstance more with Regard to these Visits ; which is, that in all these Visits he carried with him Pistols and Instruments of Violence, into the Room, and laid them close by him ; and tho' it is usual for Persons of Quality to ride with them ; yet it is not possible to think, that the Defendant would always carry them into the Lady's Room, and lay them close by him, if it was not to prevent the Interruption of his Conversation, or criminal Familiarity with the Lady, which nothing but Violence could do ; but if it is difficult

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difficult for you to imagine the Design of the Defendant, in having those Arms close by him, you will find, at last, by the Defendant's own Declaration, that he carried them to prevent such Interruption; and that the first Person of the Family that came in to the Room, to disturb them, should be a dead Man; and I defy any Man, whose Mind is tinctur'd with Virtue, to form to himself any other Design of the Defendant's laying the Arms by him, than that of a cruel Ruffian, who is in Criminal Conversation with another Person's Wife, embracing her with one Hand, and holding out a Pistol with the other, to commit Murder, if he is interrupted. This is another Circumstance of the Guilt, and which must fill the Person's Mind with Horror, that intended to attack him; and, therefore, if the Defendant had any Thoughts of committing Murder, if disturbed, then it would have been dangerous for the Plaintiff, or his Family, to have endeavour'd to prevent such Criminal Conversation, for Fear of bringing this further Calamity of Murder on his Family: Indeed I cannot think that a Person can be altogether so void of Virtue, as to design Murder at the first, before he had seduced her; yet I do say, that no Man knows how far he might go on in Vice, when once he had been engaged in it. There are, in all these Circumstances, other Things included, which I chuse rather to wave than mention now.

I now come to the Second Part of our Evidence; which is to prove the infamous Crime itself, charged on the Defendant; and here you will give me Leave to mention a Scene that happen'd on a particular Day, which our Evidence will give you a particular Account of; where it will appear, that the Defendant did proceed to the utmost Extremity of the Crime with the Lady; and tho', as I hinted before, it is impossible for Men to expect full and compleat Evidence of every thing of this Kind, yet you will find,

find, at least, the strongest Evidence that can be reasonably desired or expected: And here you will observe, that this Lady did, as all other Persons of Distinction, be their Quality ever so great, must sometimes do; that is to say, put Confidence in meaner Persons, and even in the meanest of their own Servants; and therefore, on Occasions of this Nature, it will be no Wonder to you to find, that the Lady trusted one of her own Servants with such a Matter; for none else would, or could, engage to be concern'd therein; and therefore you will find, from the Evidence of this Confident, that, on the 13th Day of ——— the Defendant, and another Person, came down to the said Town of (I) and dined with the Lady; and that, soon after Dinner, that other Person went away, and the Defendant and the Lady continued together alone, and concerted this Scheme between them, that the Defendant should go out of the House, by Eleven o'Clock at Night, and bid the Lady Good-night, in the Presence of all the Servants, to make them believe that he went away for that Night. This Scheme is not, in the least, unnatural or unlikely, if it be considered, that it was agreed upon, that he was to be let in afterwards privately. Accordingly you will find, that he did, with great Solemnity, take his Leave of the Lady about Eleven o'Clock at Night, and said, he would come to breakfast with her the next Morning; and desired the Servants to take Notice of the particular Hour he departed, and that afterwards the Lady ordered the Servants to go to Bed: Now you will observe, that there is a Door, in the Lady's House, that leads from the Parlour into the Garden; through this Door in the Garden, the Confident was to let the Defendant into the Parlour, when the rest were gone to bed; and tho' you would hardly believe that the Keeping of the Key of this Garden-door was the Office of a Woman;

yet

yet it was thought proper, that one of her Women should have the Keeping of the Key that Night, and, according to the Agreement, the Defendant came to the Garden Door, and was let in by the Confidant, who being asked, *Whether the Lady was undress'd and in Bed?* She answer'd, *No*; and desired him to stay three or four Minutes till the Lady had shifted herself; but the Defendant being uneasy, he, before the Maid had scarce Time to shift her Lady, rushed into the Room; and as soon as he was in the Room, he undressed himself, and went into Bed with the Plaintiff's Lady; and the Maid tuck'd them up together, and went out of the Room; and set up all Night, by their Order, to prevent Interruption, as what was thought proper: And that, about One or Two in the Morning, she heard a Rapping in the Room, and went up Stairs; and that the Defendant got out of Bed to let her in; and, on her coming in, and seeing them in Bed together, and enquiring what were their Commands, the Defendant said, *He was very dry, and desired some Water,* which she brought him, and which he drank up; and that the Lady had likewise some Water brought her, and some more was set at their Bed-side. Then, I think about Four o'Clock in the Morning, she heard another Rapping; on which she came up again, and found the Bed-curtains and Curtain-rods fallen down; and, for fear the Defendant should catch Cold, the Lady desired her *to fix or pin up the Curtains again*, which she did. I shall say no more on this Head; but that you will find, by the Evidence of this Witness, that they were both together in Bed, and that he was guilty of Criminal Conversation with the Lady, as will appear from the Discourse which happened the next Day between the Lady and this Servant, and likewise from other Circumstances that she will give you an Account of.

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I now come, in the third Place, to shew you another Part of our Evidence, which consists in some plain and notorious Circumstances, which serve to confirm the Defendant's being guilty of the Fact that he is charged with ; and here you will observe, that it was on the said 13th of ———, that the Defendant and another Person came and din'd with her Ladyship, at her House in (I), so you will likewise take Notice, that, on the same Day, the Defendant came to another House in (I), about Two or Three o'Clock in the Afternoon, drank a Dish of Tea, dressed himself, and went to the Lady's House there ; but before he went, he ordered a Bed to be made for him that Night, which is the very same Night that he lay in the Lady's House ; but though he bespoke the Bed, yet he never returned to it, though his Servants were in the same House that Night. This is a Confirmation of the Evidence, which our Witness will give you a particular Account of.

There are other Circumstances which serve to confirm this, as his Letters to her ; and there is an Engagement, or Paper, sign'd by the Defendant, call'd, I think, by the Lady, *The solemn League and Covenant*. It is in these Words : [*I willingly, and as incumbent in Honour upon me, do declare, that I will never be unmindful of, nor forsake the Lady ——— in any Way whatsoever oppressed, or under Difficulty ; but, at the Expence of my Blood, Life, and Fortune, will Vindicate and Defend her, against any Calumny, Calumniator or Peril whatsoever.*] And here I will venture to say, that none of the greatest Masters of Defence could have penn'd any Engagement of Defence in a more gallant Stile than the Defendant hath done this ; but though he says, that it is incumbent in Honour upon him, to declare and do such Things ; yet I must say, that he was very far mistaken in his Point of Honour—Shall any Gentleman, of the greatest Fortune or Fashion, think himself with

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obliged in Honour to vindicate and defend Injustice with his Life and Fortune? No, by no means; and therefore, tho' the Defendant might fancy this to be a genteel and fashionable Way of writing and thinking, and incumbent on his Honour to declare and do such Things, I dare say, you will be of my Opinion, that he was very much mistaken in his Point of Honour; and that his engaging so to do, was rather a Slur upon his Honour.

This is the Nature of the Evidence that I shall lay before you; which, when done, I believe none of you will doubt of the Defendant's being guilty of the Fact charged upon him; and I do as little doubt of your doing Justice; but hope, that you will give a Transaction of this Nature, the most serious and weighty Consideration, as it deserves, and not suffer such Criminal Conversation to go unpunish'd; as you have any Regard to Virtue, Morality, Religion, or the Laws Human or Divine; not in the least doubting but that you have the greatest Regard for them all, it being a Crime prohibited and punished in all Ages and Countries of the World; and, indeed, the principal Design of all our Courts of Justice, and the most glorious Purpose or Aim that you can have in your View, is to lay all Vice, especially this heinous Offence of Criminal Conversation, under the greatest Infamy; and to deter other People from committing it to the utmost of your Power; and, at the same Time, give the utmost Encouragement to Virtue.

Mr. ———, My Lord and Gentlemen, It was necessary thus to have open'd the Cause. The heinous and injurious Crime charged on the Defendant, will be proved to a shameful Degree. When I see the Jury composed of Gentlemen of Honour, and Fathers of Families, I think it would be unnecessary and improper for me now to lay before you

the Nature of this heinous Offence, which is so contrary to the Laws of God and Man, and is the greatest Violation of that sacred Property which every Man ought to have in his Wife; and is so contrary to all Notions of Honour and Justice, and which introduces into particular Families such unexpressible Afflictions and Miseries; therefore, I will not insist any more hereon, for fear of raising your Passions, and inflaming your Judgments; so I shall call our Evidence, and submit it to you.

I suppose they will admit the Marriage. [Here the other Side answer'd, *Yes*. Then the Plaintiff's Counsel call'd all their Witnesses, who proved exactly as was open'd, and the Defendant's Engagement and Letters to the Lady were read, (on which the Defendant's Counsel afterwards made their Observations.) Then the Plaintiff's Counsel said, they had done for the present. Then the Defendant's Counsel made their Defence, as follows.]

S. G. May it please your Lordship, and you Gentlemen of the Jury, I am Counsel for the Defendant, who little thinks that you are, at this Time, sitting on him, or any of his Actions, he himself being now Abroad, in the Service of the Publick; and it would have been but kind, when he was Arrested as going to (K.) in the Publick's Service, if the Plaintiff had staid till the Defendant had an Opportunity of returning, and laying Things before you, for his Defence; but as Plaintiffs have a Right to bring their Actions whenever they will, and to their best Advantage, so the Plaintiff here, has chosen to bring his, when the Defendant is absent, and cannot answer for himself; and who hath not been at Home Three Hours since he was arrested in this Cause; and therefore it is incumbent on us, who are Counsel for him, to make as good a Defence as we can, according to our Instructions. The Counsel

for the Plaintiff have laid before your Lordship and the Jury, the most unhappy Circumstances of the Plaintiff; and that they are such, as that he cannot be involved into greater; and they would represent unto you, that the Plaintiff hath been involved therein, by the unlawful Intimacy of the Defendant with the Plaintiff's Lady. With Regard to the Plaintiff's melancholy Circumstances, nobody can have a more Fellow-feeling for him, than I myself have; for I can easily represent to myself, what Misfortune and Trouble it must be to have such Affliction as this brought upon him; but then I must say, that it will not follow, that, because the Plaintiff is to be commiserated, therefore this Defendant is to bear the Burden of his Misfortune. If I can shew here, that the Defendant was not the Occasion of bringing this Misfortune on the Plaintiff, we hope that his melancholy Circumstances will have no Weight with the Gentlemen of the Jury, notwithstanding what hath been offered by the Plaintiff's Counsel, as an Attempt towards proving the Defendant guilty. The Gentlemen, who were Counsel for the Plaintiff, attempted, in the 1st. Place, to shew, that there was Guilt in the Defendant; and in the second Place, to aggravate that Guilt, in order to induce the Jury to believe that the Plaintiff's Complaint was well founded, and intitled him to great Damages in this Cause; but we hope to meet them in both these Circumstances. I shall begin with the First of these, which is to consider the Evidence laid before your Lordship and the Jury, and shall submit it to you, whether there is any Guilt proved in the Defendant? To prove his being guilty, they have called a great many Witnesses; but, notwithstanding that, and tho' they open'd, that they would prove the infamous Crime itself to a shameful Degree; yet you may perceive, that the Fact itself depends only upon the Evidence of one Witness, which is liable to Objections,

tions, and is very improbable. They first call'd a young Lady, one Miss (L) who proves no more, than that the Defendant and the Lady's Acquaintance began only about the latter End of ——— last, when my Lady and she was at the Play-house, where the Defendant, after the Play was done, came into the next Box, where my Lady was, and spoke to her as is common in such Places ; but nothing particular pass'd betwixt them at that Time ; — and that he did not so much as hand her into the Coach, and that another Gentleman had that Honour. This was the first Time they became acquainted. Then she says, that the Defendant did, some time in ———, about three Weeks afterwards, make a Visit to my Lady at her House in (D), to which she had removed from (M) after the Death of the Child ; and that the young Lady herself was in Company with them, and that her Lady was going a Journey, and packing up her Jewels, and desired her to look for such a Snuff-box, and to order Tea to be brought, and that she returned with the Snuff-box within ten Minutes, and found the Tea brought up, and the Defendant and the Lady sitting as she left them : Surely nothing can induce you to think, that there was any thing Criminal in this Visit ; for the very Circumstances of the Time, and Manner of it, shews that nothing pass'd at that Time, more than what is usual in the most reputable Families, where People receive Company and drink Tea ; but the Gentlemen of the other Side would represent it, as if she had been sent out of the Room on purpose to give the Defendant and the Lady an Opportunity of saying or doing what was not decent ; because the Bell was not rung, instead of the young Lady's going ; and because she was sent on another Errand, to desire the Tea Things to be taken away, tho' she says, she returned within ten Minutes, and found the Tea Things taken away.

The

The next Meeting between the Defendant and the Lady was at a Publick House or Inn, as she returned from (*E*), where she went about the Beginning of ——— last, and staid there five Weeks and return'd, and in her Way she supp'd with the Defendant at this publick Inn, the *Crown* in (*H*) ; but I don't think, on the Evidence of (*N*) or (*O*), that there was any thing indecent past between them : — They met together at this publick Inn as Travellers ; and, the Defendant being acquainted with her, they supp'd together as Travellers. It is not in the least insinuated, that there was any Criminal Conversation between them : And it is no Wonder that People, who have some Acquaintance together, should stay up some time together after Supper.

The next Meeting of the Defendant with the Lady was at (*I*), when the Apothecary (*P*) was with him ; but he does not so much as insinuate, that there was the least Indecency past between them ; but declares, that the Defendant went to lie at the Inn that Night ; nor, indeed, do they pretend to say, that the Defendant ever lay at my Lady's, except that Night which (*Q*) speaks of ; which brings me to consider her Evidence ; and what she says was done on the 13th of ——— last, the Night which she says he lay there ; for the whole Account of that Night's Transaction depends on the Evidence of this (*Q*) the Cook-maid : For tho' there were several Servants in the House that Night, yet they have not ventur'd to call any other Person except her, and have chosen to rest it on her Evidence ; and you will be pleas'd to observe what a strange Account she gives of the Transaction : — She owns that she did not come into my Lady's Service, nor had any Acquaintance with her, till about the Middle of ——— last, and that she was not hired by her Lady ; but that she was introduced into the Family by the Intervention of Mr. (*R*), who appears to be a Friend, Agent, and Steward of the Plaintiff,
and

and, upon some Misrepresentation of Things between the Plaintiff and his Lady, it was thought proper to confide in her, who is represented to have lived in modest Families before, which is a little extraordinary; and it is as extraordinary to think, that she should become, in so short a Time after she went there, so great a Confidant of the Lady's, as to be admitted into all her Secrets, especially her Intimacy with the Defendant. The Thing itself is very improbable: And, to introduce this Story, she gives an Account, that a little after she went to (1), the Defendant came down to visit my Lady; and that he was in the lower Room, and that the two Footmen were gone to bed, and my Lady in her Bed-chamber, almost undress'd; — and that she went up to tell her Lady of his being below, who immediately dress'd herself again, and came down to receive the Defendant on the Ground-floor. — They have represented this as an immodest Visit, tho' he staid till she had dress'd herself, and had come down to receive him on the Ground-floor. If it had been an immodest Visit, she would not have staid to dress herself. And then this (2) tells you what was done afterwards; she says, her Lady order'd her to go up to the Footmen, and get the Key of the Wine-Cellar, and to desire them not to rise, because she was to be Butler that Night; — and that she made the Defendant's Footman welcome that Night, and that he and she had mull'd Wine; and that the Defendant and my Lady had only raw Wine; and that, when she went into the Room several Times, she saw nothing indecent, nor was there any Bed in the Room. But, say the Gentlemen, though there was no Bed, yet there was a Settee in the Room, which was brought there on Purpose for the Defendant's Reception and Accommodation; but this does not appear to be the Design of its being placed there; but that it was put there in the Room of a Harpsicord, which stood there formerly, without thinking any thing of the Defendant.

dant. This is all that was previous to the 13th of —. During all the Time preceding this Day, I hope there does not in the least appear any thing like Criminal Conversation, or Indecency in the Defendant; which leads me to consider what she says happen'd that Day. She gives an Account that a noble Lord and the Defendant came down that Day to dine at my Lady's House in (1), and that the noble Lord went away a little after Dinner; but that the Defendant staid behind him; and that, when they were together, my Lady sent for her into the Parlour afterwards, where the Defendant was standing with his Back to the Fire-place, and asked her, *If she could be intrusted with a Secret?*—Observe this modest Woman, who had always lived in good Families before, presently understands her Lady's Meaning; and this Virgin immediately said, *That they might intrust her with any Secret, and that they might depend upon her, and that none should interrupt them that Night:* She presently falls into the Proposal, without the least Reluctance, and understands the Secret before it was told her.

Then she gives an Account of laying on another Pillow more on the Bed; and that the Defendant, in order to blind the Family, made a Pretence to go away that Night about Eleven o'Clock, and went by the Place where the Servants were; and, in their Hearing, not only bid my Lady good Night, but the Servants: And then she tells how she let the Defendant in again, by her being furnish'd with the Key of the Garden Door. It would have been material to have called the Person whose Province it was to keep the Key before that Night, and tell how she was then furnished with it: However, she says, that she did let the Defendant in again, within Half an Hour, and that he saw Mrs. (S) warming her Ladyship's Shift, which made him the more impatient; and that the Defendant could not stay until this (2) had

had taken up her Shift, and put it on her Ladyship; but that the Defendant came into her Bed-chamber, before my Lady was undressed; and says, that she saw the Lady go into her Bed, after she was undressed; and that the Defendant, after he was undressed, went into Bed to her; and that she tucked them both up; and that she stood Centry within Hearing, to prevent any-body's interrupting them, and to furnish them with what they wanted; and that about Two o'Clock in the Morning she heard some Bustle or Noise in my Lady's Room; on which she went in for Orders; and that, according thereto, the Defendant had a Pint of Water, because he was warm; and that my Lady had another Pint, because she was warm too; and then she retired, and staid till she heard another *Bustle*, which was some time afterwards; when she went in again, and found the Curtains thrown down; tho' one would have imagin'd, that they would rather have been thrown down on her hearing the *first Bustle*. And then she says, she staid about Half a Quarter of an Hour to pin them up; and, in order to induce you to believe her, and that Things were concerted, she tells you, that this occasioned Mirth to her, as well as to the Defendant and the Lady: But I think there seems to be a Contradiction, with Respect to the Orders given her, of her being on the Watch that no-body should come near to hear or know what they were about; for she tells you, that my Lady recommended her to something that must hinder and put her out of her Watch; which was, that she might be as *free, merry and happy* with the Defendant's Man, as she was to be with his Master.

L. C. J. I think it was after Dinner that she had Orders to be on the Watch, and to take Care that none of the Servants should come near to hearken at the Door while they were there.

S. G. I know there were Orders given in general to take Care of the Door, and that none should come in without first knocking ; besides, with Submission, I think it is inconsistent ; for if all the Servants were so fastened, or shut up, there was no Occasion for her standing Centry.

L. C. J. That is not warranted by the Evidence ; if you are in any Doubt, you must examine her again ; for there were no Directions given her to watch the Lady's Door at Night. I will tell you her Evidence ; she was ask'd, *If she could be intrusted with a Secret* ; and her Answer was, *Yes* ; for *she would take Care that no-body should come near her, nor interrupt them that Night.*—I have taken it down.

S. G. I think she was up all Night for that Purpose. After she tells what pass'd that Night, the 13th of —, she tells your Lordship and the Jury, that she was imployed by my Lady to wash her Linen afterwards ; and she makes such Observations thereon, that any single or modest Woman would be ashamed to mention. Then she tells how she was introduced into the Family ; of which I have taken a little Notice before ; then she tells where she was before that ; and that she hath, since her being dismiss'd from the Lady's Service, been taken into the Plaintiff's Service : And then she gives a very romantick Account, as I think, of her being taken into Custody, and afterwards discharged ; and then making an Affidavit afterwards. She says, that there were about five People that took her into Custody, whereof (R) was one ; and that they never told her, nor had she the Curiosity to ask them, for what she was taken up ; and that she continued in Custody from Ten in the Morning, till about Four in the Afternoon, and knew not for what ; nor

does she give any Reason, why she was discharg'd out of Custody ; but, at last, with a great deal of Difficulty, she was brought to declare, that she had nothing to say in the Affair, about the Defendant and the Lady ; which, she said, was the Reason of Mr. (R's) consenting to her being discharged. Then she says, that while she was in Custody, Mr. (R) called her bad Names, such as Bitch, and the like ; and that they offered her no Encouragement, nor yet to be her Friend, or to let her out of Custody, in order to make a Discovery of the Affair ; and yet she says, notwithstanding all this, when she was discharged out of Custody, she went to (M) and made an Affidavit, containing every Thing relating to the Affair, as she hath deposed here. This is such a monstrous Account of the Transaction, that I submit it, whether it will not greatly invalidate her Evidence ; which is the only one to support the criminal Conversation alledged.

Then, to confirm (Q's) Evidence, by Circumstances, the Gentlemen called (T) at (I) and her Maid, who say, that the Defendant ordered a Bed to be made for him there that Night ; but that he did not come to it that Night.

Then they called another Witness (U), who says, that the Lady embraced the Cook-maid, and said, *She was glad to see her* ; and that the Cook embraced the Lady and returned the Compliment. This was to shew the Intimacy of the Lady with the Cook, and the great Confidence that she had in her.

Then they called another Witness (V) for the same Purpose. He says, He went down to seize my Lady's Jewels and Papers, and to confine her ; but she thought proper to elope that Night out of a Window ; and that he perceived great Intimacy between the Lady and the Cook.

The last Circumstance that the Gentlemen produce, in order to confirm the Defendant's being guilty, is Letters ; and the first they read, to which they

were

were pleased to give the Appellation of *solemn League and Covenant*, I think proves nothing of the criminal Conversation ; for the utmost that they can make of that Letter is only to shew the Affiduity of the Defendant in being acquainted with the Lady.

The next they read was dated the 23^d of —, Ten Days after the said 13th of — ; wherein he only compliments her, and says, *That he is ever thinking of her, and wishes her every Soulasement*: This, I am sure, does not prove any Thing criminal, or shew that the Lady had granted him any uncommon Favour before that.

The next Letter says, *That he had not recovered the Injury that he did himself by the last Journey*.—Pray can any-body infer criminal Conversation from these Words? I am sure they cannot ; nor can they imagine any such Thing, by their sitting up late after Supper, in the publick Inn, where they accidentally met together. The most that can be made of any Expression in these Letters, is, that they only shew the Affiduity of the Defendant, to gain the Lady's Favour ; and suppose there was Affiduity used, and that my Lady repelled that Affiduity. I only mentioned it, in that Manner, because such a Thing may be supposed ; but how to infer or make out, that there was any Thing criminal before, by the Expressions in these Letters, I am at a Loss to find out.

This, I think, is all the Evidence offered on the Part of the Plaintiff, to induce you to believe, that their Action is well-founded ; and that there hath been criminal Conversation between the Plaintiff's Lady and the Defendant : It depends only on the Evidence of a single Witness, which, as I have observed, is very slight : And as to the Affiduity, it appears to commence no sooner than the latter End of — last ; therefore I submit it whether you can, in your Conscience, conclude, that the Defendant is guilty of criminal Conversation on these Circumstances that I have mentioned, and on the single Evidence of a Woman,

Woman, who hath owned, that she hath behaved herself very immodestly, and prostituted herself so far as to be a Transactor of such a vile Affair.

And as the Gentlemen hath submitted this to you, on the single Evidence of that Witness, and Circumstances mentioned : And, as it is impossible to know before Hand your Opinion, whether he is guilty or not guilty of the Crime charged on him ; therefore it will be necessary to say a few Words, with Regard to the Circumstances of his Guilt, or the Nature, Degree, or Aggravation thereof.

There are two Things to be considered by you ; 1st, Whether the Defendant is guilty or not ? 2^{dly}, If you believe that he is guilty, then you are to consider in what Degree he is so, and to give Damages accordingly : And here I cannot help saying, That the two learned Gentlemen, in the setting out of this Cause widely differ'd from one another. The second said, That it was unnecessary to insist on the Defendant's Guilt, and would not attempt to raise the Passions of you worthy Gentlemen, but submit the Circumstances of the Case entirely to you ; but the other Gentlemen made use of all the Flowers of Rhetorick and Oratory, to induce you to believe that there was greater Guilt than ordinary, and hath represented my Client, as having it in his Mind to commit Murder and Adultery ; and that he came there so entirely void of Humanity, and Fear of God or Men, as to commit both, if interrupted. They have likewise set forth the Heinousness of the Crime to the utmost Degree that Rhetorick was capable of ; and have told you, I think, that it is the invading of that sacred Property which every Man ought to have in his Wife. They have likewise told you the Danger and evil Consequence of the Crime ; all with a Design to induce you to give great Damages ; and, in their Declaration, they have declared, That the Defendant did not only commit this Crime, but that the Plaintiff was thereby deprived

deprived of the Comfort and Society of his Wife : And I must admit, that (if the Defendant hath, by his Assiduity, prevailed with the Lady to injure her Husband, in the Manner charged, by debauching her ; and that that is the Reason of all the Misery and Loss that the Husband hath sustained) these Circumstances will have Weight to heighten the Damages : But if these are thrown into the wrong Scale, then they must, of Consequence, lessen them. And though they opened, That the Defendant, by his constant, unwearied and long Assiduity, Attendance and Importunity, at last prevailed with the Lady ; yet they have not been able, in Point of Evidence, to carry it further back than the latter End of ——— last, according to Miss (L's) Evidence ; and that the Lady, after that, went out of Town, and staid five Weeks ; so that the Meetings at (H) and (I) were all in the Months of ——— and ———.

This being the State of their Evidence, I thought it necessary to examine one of their Witnesses, how my Lady spent her Time before that ; and was told, That in ——— or ———, about two Years ago, my Lady went to *Bath*, and staid a considerable Time there ; he seems to fix her staying there till *Lady Day* thereafter ; and that the Plaintiff came to her when she was at *Bath*, in Expectation that she would have gone down with him to his Seat in (W), and that he used a great deal of Importunity with her to go along with him ; but she refused, and insisted on her staying at *Bath* for the Sake of her Health : So that the Plaintiff went to (W) by himself, and that his Lady staid behind him about three Months, and then came down to him at his Seat in (W), and staid there with him till the Meeting of the Parliament ; which brings it till about this Time Twelve-months, or last *Christmas*, that they came both here to Town to the House at (M) ; and, on the
Death

Death of the Child, they went from thence to (D). After this the Plaintiff went out of Town, about the latter End of ——— last, and left his Lady behind him : He went to his other Seat in (X), and within a few Days afterwards, the Lady went to (E), and from thence to (I). This is the History with Respect to the Time : And if I was not well warranted, from Evidence, under the Plaintiff's own Hand, which I have to lay before you, and which is in Favour of the Defendant, it would ill-become me to trespass on this Lady's Honour. I shall shew you, that when the Lady was at *Bath*, as it hath already appeared to you in some measure, the Plaintiff came to her, and importuned her very much to go with him to (W), but she refused to go, and told him in plain *English*, *That she would not be buried with any (W) Baronet whatsoever* ; and so he left her at *Bath*, behind him, with much Uneasiness : And it will plainly appear, That all the Misfortune, which I cannot speak without Concern for the Plaintiff, hath been owing to the Plaintiff's leaving the Lady at *Bath*, and to the Company which she kept there ; and I hope it will not be insinuated, that the Defendant kept her Company there ; for we shall fully prove, that he was at that Time out of the Kingdom with (Z) all the while. He went in ———, about six Months before the Lady went to *Bath*, I think for *Lisbon* ; and set sail again from thence the 8th of ——— thereafter, which takes in all the Time that the Lady was at *Bath* : And it hath plainly appeared, that it was a long Time after that, before the Defendant had any Intimacy or Acquaintance with the Lady. And here it will be necessary to shew you what Opinion the Plaintiff had of his Lady's Behaviour at *Bath* ; and what it was that made him separate himself from her : And it will also appear, that he took up this Resolution to part from her, on Account of her Behaviour at that Place :
And

And as they have not fixt the Time of the Defendant's first meeting with the Lady, any further back than that at (H), which was some time in — last, it is proper to acquaint you with what the Plaintiff wrote to his Lady on the 2d of — before. Here he read thus: [*Madam, I am very sorry that I am under a Necessity to write to a Person, who, I know, hates and despises me.*] This was said by him, before there was any Pretence of the Defendant and the Lady's being acquainted. Then he goes on, and says, [*I told you, before I left London, that I was determin'd to part,*] which shews, that it was not occasioned by the Defendant's seducing her, in the Plaintiff's Absence; for he says, *I told you, before I left London, that I was determin'd to part.* Then he goes on, [*Give me Leave to say to you, that if you had not staid behind me, at the Bath, and entered into such a vicious and abandoned Set of Acquaintance, we might still have been happy.*] He is so far from mentioning or meaning the Defendant, that he expressly imputes it to her staying at the Bath behind him, and keeping Company with vicious People: And then he says, [*From that Source our greatest Calamities flow, and if you had searched the World for People compleatly infamous, you could not have found out any more abandon'd and wicked than those you were so often with; and I have never been easy in my Mind since that Time*] meaning the Time that he left her behind him at the Bath, about Christmas — near two Years ago. And then he says, [*My ill Health, I can safely venture to say, was occasioned by it: I once loved you to Madness; but your Scorn and Contempt of me, have made me withdraw my Affections in a great Measure from you.*] This is the Letter wrote the 2d of — last; but there is another Letter from him to his Lady, dated the 7th of the same Month; by which, you will perceive, that tho' the Plaintiff had great Reason to complain of her, yet the Ground

of that Complaint was laid before the Defendant's Acquaintance with her. In this Letter of the 7th of —, he says, [*I received your Letter, and, in Answer thereto, I must tell you, that I am determin'd to part, and whatever the World says, I am not concern'd about it; I am already as unhappy as I can be.*] Was this occasioned by the Defendant? No, he could not then have him in his Thoughts. Then he says, [*I assure you, had I not been fully perswaded that I was wronged, I could never have prevailed with myself to have come into this melancholy Resolution; I know you have wrong'd me.*] What does the Husband mean, when he writes to his Wife after this Manner? That he is resolv'd to part, and that she hath given up herself to vicious and abandon'd People's Company; and that he was sure she had wrong'd him. And then he afterwards adds; [*And it will add but very little to my Comfort to bear, that you have behaved well when from me.*] I say, What does he mean by writing to his Wife after this Manner? Now, suppose you were satisfy'd with Respect to the Fact of Criminal Conversation; yet, can you, in your Conscience, lay the whole Load of the Plaintiff's Misfortune on the Defendant? Does it appear to you, that he first seduced her; and that she was not suspected by her Husband before that? Or, can you, on your Oath, say, that, by the Interposition of the Defendant, the Plaintiff hath lost the Comfort and Society of his Wife, as in the Declaration, for which he lays Damages? No, you cannot say so; for you cannot but be satisfy'd, when you hear the Plaintiff's Letters to his Wife read, that the Foundation of all this Misfortune was laid before, by her Behaviour at the Bath, in the Year —; so that, however you think of the particular Fact imputed to the Defendant, you cannot take this into your Verdict; *that the Plaintiff thereby was deprived, and lost the Comfort and Society of his Wife; especial-*

ly if you consider that it appears from the Evidence; that this House at (I) was taken and appointed for the Lady, and the Servant (Q) put upon her; and that the Plaintiff had actually left her, and gone into (X) and had sent her these Letters, when he was in (X) or on the Road thither; wherein he says, *He knew that she had wronged him, and that it would be but little Comfort to him to hear of her better Behaviour, when parted from him,* as I mentioned before; and therefore you cannot give great Damages, tho' it should appear to you that the Defendant is guilty of the Fact imputed to him; because there is a great Difference between him that first seduces her, and him that comes to be acquainted with her, after she was so seduced. And it is plain that he who first seduced the Lady, is the Person who hath been the Author of all the Plaintiff's Misery and Misfortune; as appears from his own Hand Writing.

As it is impossible to know your Opinion, whether the Defendant is guilty of the Fact or not; so it was necessary to say something with Respect to the Quantum of the Damages, in order to mitigate and lessen them, in case you should find him guilty: But tho' I am speaking of the Damages, yet I am very far from admitting, that it hath been proved that the Defendant is guilty of the Fact charged upon him; but I insist on the contrary, and must leave it to your Consideration and Opinion, whether, on the single Evidence of (Q), which is very defective and suspicious, you can find the Defendant guilty of the Fact charged on him; and whether you can say, that he is the Author of all the Plaintiff's Disquiet, and deprived him of the Comfort and Society of his Wife; and whether the Plaintiff had not determined to leave his Wife before the pretended Criminal Intimacy of the Defendant with her; and whether the Plaintiff had not actually left her, when he had gone into (X) and had taken a House in (I) for

her. I submit it to you, whether you can, under all these Circumstances, think it proper to find a Verdict for the Plaintiff, and load the Defendant, who is just come to Age, and a younger Brother, and now out of the Kingdom, with the Plaintiff's Misfortune? I should rather think, that, as the Plaintiff's Misfortunes are laid at other People's Doors, you would not think it reasonable to load him with them; but that you will find a Verdict for the Defendant: And, if you should think proper to find it for the Plaintiff, I submit it to you, whether, under all these Circumstances I have mentioned, you can give any considerable Damages to the Plaintiff.

Serj. ———, My Lord and Gentlemen, I am likewise Counsel for the Defendant. It is, indeed, a great Misfortune of his, that he is now absent; and it cannot be expected, that he is capable of defending himself, or to give proper Directions to his Counsel for that Purpose. There are two Things to be considered by you: First, Whether there is sufficient Evidence before you, that the Defendant is guilty of the Fact charged on him, or not? And if you think there is, then the second Thing to be considered by you is, In what Degree he is so; and what Damages you are to give on this Occasion, and under the Circumstances that have been mentioned? As to the First,

Whether there is sufficient Evidence, or not? I submit it, that there is not sufficient Evidence, taking it all together, of the Defendant's Guilt, but rather of his Innocence. And here I would take Notice of what (N) declares; she says, *That she was a long Time in the Service of the Plaintiff and his Lady; and, I believe, she is now in the Plaintiff's Service; and, that her Employment was to put her Lady to Bed every Night; and, that she never saw anybody in Bed with her; but that she lay single.*

Then

Then they bring in one (O) who is supposed to be hired by the Plaintiff, as Footman to my Lady ; who, on Cross-Examination, says, *That he never saw any Thing indecent between the Defendant and the Lady all the Time he was with her ;* and who seems to have been sent there as a Spy ; and it appears, by their own Evidence, that these two Witnesses are now kept by the Plaintiff as his Servants. These two do not prove any Thing of the Defendant's being guilty, but rather shew that he is innocent of what he is charged with.

They have, indeed, produced another Witness, (Q), who says, *She was sent by one (R), the Plaintiff's Agent, to be hired, who sent her to (Z) at (M), who hired her to be Cook to the Lady, to go down to her House at (I).* And when is she sent down there ? She is sent there after the Date of these two Letters sent by the Plaintiff to his Lady, acquainting her of her Behaviour at the Bath, and his Resolution to part : And, when this Witness came down to (I), she gave a very imperfect Account how she came there, and what past. She says, *She was hired by (Z) to be Cook ; and that she brought no Letter to my Lady about her being hired ;* and had no Discourse with my Lady, as I could understand, about it, to the Purpose ; *and hath ever since been in the Plaintiff's House in the Country, and came up to Town from thence to be a Witness ;* and that, *her Wages was paid her by the Plaintiff's Agent ;* and, as I said before, this Transaction, that she gives an Account of, is some time after the Date of the two Letters sent by the Plaintiff to his Lady, acquainting her of his Resolution to part ; and, as the Circumstances was such, and as this Cook was put upon her, it must be allowed, that it was necessary for the Lady afterwards to be on her Guard, and to be cautious and reserved, with Respect to the Cook ; therefore I submit it, whether it is probable to imagine, that the Lady should

should immediately make this Witness her greatest Confidant in the World? And how long is it that this Witness lived with the Lady? It was not above five Weeks from her coming there, to the 13th of ———, which is the Day that she says the Fact was committed: Besides, she was not particular to the Day when the Lady began first to put Confidence in her: And, I must say, that there was not a Servant in the Lady's House but might have known what past that 13th of ———, and before that, as well as her: And I submit it to you, whether it is not dangerous, in such a Point as this, and attended with such Circumstances as have been mentioned, to think it sufficient to prove the Fact, only on the Evidence of such a single Witness as (2)? And whether it will not be an easy Matter to induce others to bring such Actions wrongfully? And pray consider a little some Things that this Woman tells you: She says, *That, in one Minute of that Night, she was very much frightened in bringing the Water, lest some People should come and kill the Defendant; and then she tells you, That, a little after this, when she was called into the Room, that she fell a laughing at what happened, as well as the Defendant and Lady themselves.* There is another Part of her Evidence which must be submitted to your Lordship and the Jury, whether the Thing, in its Nature, be credible and probable or not? She said, That my Lady took up a Pistol, and said, *That she would shoot, or be the Death of, the first Person who should interrupt her and the Defendant.*—Strange indeed! that a Lady of her Character and Family should act and speak after such a Manner; therefore, I hope you will not rest it on the Evidence of this single Witness, nor think it sufficient to prove the Fact charged: And, indeed, the other Side themselves, thinking it not sufficient, have produced circumstantial Evidence thereof, as Letters under the Defendant's

Defendant's Hand ; the Chief of which, wherein they glory, is that which they call, *The solemn League and Covenant* :—Now with Regard to that, as the Witness says, *That the Letters from the Defendant to the Lady came to her after the 22d of — last* ; and as there is no Date or Time fix'd when this particular Paper was written, is it not natural to think, that it was written about the Time of the Date of the Letters ? And if so, and considering what happened on the 19th of —, when the Plaintiff's Servants came with Blunderbuffes, &c. to confine the Lady, and who expected to find the Defendant there ;—I say, if such Things were so, and as he was conscious of his own and the Lady's Innocence, was it not natural for him to say, *That he would defend her, as innocent with Respect to him, against any Calumny, or Calumniator whatsoever ? And that he would likewise vindicate her, as well as himself, who was slandered and wronged on his Account ?* And it must be remembered, That we are to apply to your Reason, Judgment and Understanding, and not to your Passions ; for you are to consider, *Allegata & Probata*, and whether there is sufficient Evidence produced to prove the Fact charged :—And you are likewise to consider the Circumstances of Things, with Respect to the Damages, with Reason and Understanding, and not be carried away by the Passions ; for there have been a great many Actions of this Kind brought with Success, both with Respect to Damages, and with a View to influence the Ecclesiastical Courts. But,

2dly, With Respect to the Damages, you are to consider in what State the Husband and Wife lived before ; whether they lived happily together, when the Plaintiff received the supposed Injury ? Again, you are to consider, what are the Circumstances of the Parties before the Court ? What are the Circumstances of the Defendant ? He is a very young Man, hardly come to Age, and

and a younger Brother, and is now abroad in the Service of the Publick: And with Respect to the Plaintiff, it will appear, beyond all Contradiction, that he had put his Wife away, turned her out of his House, and hired another House for her, and now brings an Action against the Defendant for Damages, by his being deprived of the Comfort and Society of his Wife:—What Damages can he sustain, by losing that Comfort and Society, when he had deprived himself thereof before?—For it is plain he had thrown her off, and had given his Reason for it; and tells her, *That her Conversation and good Behaviour for the future will add but very little to his Comfort.*

I hope, as he has thus expressed himself; and, that, as he is not concerned what the World will think or say about it, on the Whole, after Consideration of the Imperfection of the Plaintiff's Evidence, you will think it proper to find a Verdict for the Defendant; which will, in a great Measure, clear the Character of the Lady, which will be of greater Advantage to the Plaintiff, than his proving the Crime, or getting Damages; and which will likewise shew, that the Defendant is innocent: But if you think proper to find a Verdict for the Plaintiff, as he does not value what the World says of his parting, nor the Damages, I don't think that you should value the Damages any more than he.

Mr. ———, my Lord, as the Plaintiff went out of Town, to his Country Seat in (X) on the 30th of ——— last, we shall read his two Letters that he sent his Lady, dated the 2d and 7th of ——— thereafter, which shew the Reason of his leaving her. The first of them appears to have come to the Lady under a Cover; and we shall prove, that they are both the Plaintiff's Hand-writing.

L. C. J.

L. C. J. Was not this (Z), who hired (Q) for the Lady's Cook, a Servant of the Plaintiff?

Mr. ———, Yes, my Lord, she was a Servant at his House in (M); she was the Child's Nurse: after whose Death, the Plaintiff gave her Leave to live there.

These are the Letters which we are to prove and read.

Call Mr. ———.

[Here the Defendant's Counsel call'd this one Witness to prove that these two Letters were the Plaintiff's Hand-writing; then these two Letters were read; Part of which are exactly as the S. G. opened; for he only read what made for the Advantage of the Defendant. The other Parts of these two Letters, which are in Favour of the Plaintiff, are taken Notice of by his two Counsel in their following Reply. Then the Defendant's Counsel called another Witness, to prove, that the Defendant was out of the Kingdom all the Time the Lady was at Bath; and another Witness to prove, that the Defendant was but just come to Age, and a younger Brother: On which the Defendant's Counsel said, they had done. Then two of the Plaintiff's Counsel made their Reply as follows:]

Mr. ———, I hope your Lordship will favour me with a Reply. I must own, that it is a little surprizing to me, after we have given the fullest Evidence of the Fact charged on the Defendant, corresponding in every minute Circumstance, and uncontradicted by any Witness, or any Thing else produced by the other Side, that they should yet seem to doubt whether the Defendant is guilty of the Fact charged on him; and that they should, by their Ingenuity,

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endeavour to raise Objections, which may be so easily answer'd.

The first of their Objections is, That the first Part of our Evidence, relating to the Assiduity of the Defendant to get into the Lady's Favour, is nothing but what is common, and is only a Piece of Gallantry that passes daily between great People. I did, at first setting out, say, and do again repeat it, that tho' that general Evidence of his Assiduity, simply considered, abstracted of itself, would not be Evidence sufficient for the Jury to found their Verdict for criminal Conversation ; yet I must say, that this Evidence, when accompanied with other Evidence of the Fact, shews plainly, with what Design these Addresses were made ; and I beg Leave to say, that it is impossible for any Gentleman to make Doubt of the bad Design that the Defendant had in making these Addresses, if he considers what happened afterwards ; and, indeed, if we had not given this Evidence, we should have heard of their Objections for want of it ; and they would have told us, and ask'd us, How is it possible for a Gentleman, on his first Meeting on the Road, or at a publick Inn, accidentally with a Lady, to be guilty of such a Fact, without shewing their general Acquaintance and Visits before that.

Then they are pleased to say, that, after this general Acquaintance, nothing appeared criminal in these Visits made by the Defendant to the Lady. I own, that nothing, directly criminal, did appear openly and fully ; but there was so much appeared to the young Gentlewoman, the Lady's Companion, who could then be the best Judge, that she thought it unsafe to stay any longer there, for Fear of losing her Reputation : But the Gentlemen of the other Side are pleased to drop a good Part of the Evidence, because they know and feel the great Weight of it ; for you may remember, that the young Lady was rebuked

rebuked for her being out of Humour ; and that she told the Defendant and the Lady the Reason of it ; and that it was on the Account of these Visits, that she left her Service.

Then they say, with respect to their meeting at (H), there was nothing criminal in that ; it was only two Travellers meeting accidentally at a publick Inn, and taking a Supper together, as usual. If it had been so, I would agree with them ; but the contrary plainly appears, if you do but consider the Circumstances that went before : I mean the Defendant's Servant riding round the Lady's Coach, and looking earnestly into it, and riding back again ; and then the Lady's asking the young Gentlewoman in the Coach with her, *If she knew that Person ?* who answered, *That she had seen him before.* To which the Lady replied, *And so have I too :* And then consider what happened afterwards ; they had before met with his Servant on the Road, and then, a little after that, they met with their Master himself at the Inn. Could this be an accidental Meeting ? No ; it is plain that this was a design'd Meeting ; and I do say, a Man must shut his Eyes, and make no Use of his Senses, to say, or think, that this was an accidental Meeting : And I must likewise beg Leave to say, that this Meeting, under these Circumstances, appeared to be a little criminal, and an Imputation that few would endure in their own Case ; that he should sit up with her so long alone, and at such unseasonable Hours, as our Witnesses, in their Evidence, have mentioned that he did there, and in his Visits ; and which is not contradicted. Indeed, the Gentlemen of the other Side would make you believe, that there was nothing criminal in any, or all, of his Visits, until that of the 13th of —, when the Fact was committed ; but I am sure it is impossible to recollect that from the Evidence, when you consider that all the Witnesses, that speak of the Visits, say, that he came

with Fire-Arms, brought them into the Room, and laid them by him ; and then consider his Declaration concerning the same ; that *he would, at the Expence of his Blood, Life and Fortune, defend the Lady* ; and then think, if it is possible to imagine, that there was nothing criminal in these Visits. It is my Duty to mention these Things, tho' I am sorry for what hath happened ; but God forbid that the Jury should not do their Duty ; for it is plain, from all the Circumstances of the Transaction, that these Visits were criminal.

And then they say, with Respect to the Fact itself on the 13th of —, that it depends only on the Evidence of one single Woman, (Q). As to that, I say, that it would be hard for People to conceive or think, that it could depend upon more than the Evidence of one Witness : It would have been shameful, indeed, to the utmost Degree, if it had been publick. We should have produced more, if it had been possible to do it.—There were, indeed, two Confidants ; one of them we cannot come at, but the other we have : And to say it is dangerous to find a Verdict, in a Case of this Nature, on the Evidence of one Witness only, is surprizing : And I will venture to say, That every Crime of this Nature would go unpunish'd, and many Families be ruined, if you required the Evidence of more Witnesses than one : And there have been many Cases of this Nature, where a Verdict hath been found for Facts, where the Evidence hath not been so strong as here : But tho' the Fact in the Bed-chamber depends on her Evidence, yet is she not confirm'd in many Instances. I submit it to your Lordship, whether it does not appear, that he order'd a Bed to be made for him at the Inn, on that 13th of — ; but he never returned to it that Night, though his Servant lay there the same Night : Besides, have they given you an Account where he lay or abode that Night ? or

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brought the least circumstantial Evidence whatsoever, to shew our Evidence not true? Nor does the Character of our Evidence stand impeach'd; and therefore you that are on your Oath, must give Credit to what she says on her Oath: So that, as the Gentlemen of the other Side have produced no Instance, wherein such-like Evidence hath been rejected, as insufficient, nor have they impeached, or contradicted her Evidence; and as you are on your Oaths, you cannot but find a Verdict for the Plaintiff. It would be needless to insist longer in answering that Objection of the Insufficiency of the Evidence of a single Witness.

And as to that Circumstance about her making an Affidavit formerly of this Transaction, which she owns she did, I shall only say, that if she had not spoke here on her Oath, agreeable to that former Affidavit, they would have been ready enough to have taken Notice of it, and contradicted her.

Then they say, that it is surprizing and improbable that this Lady would be so free as to place such great Confidence in this Woman; and that she would have been more cautious and reserved, and more upon her Guard; and yet, in the very next Breath, insist upon this unhappy Lady's being a Woman of an abandoned and infamous Character: If so, where is the Surprize? And though this (2) was drawn in by the Lady, or by those having Authority or Influence over her, to agree to conceal the Secret, it will not follow from thence, that she was *vile* for her so doing: It was, indeed, a Weakness in her to be drawn in, but it is no Degree of Guilt: But suppose this (2) was that Woman (which we deny) where is the Reason for Surprize, that one infamous Person should put Confidence in another?

It was taken Notice of, that I had, by Art, endeavour'd to aggravate the Guilt as much as possible. As to that, I am sure that there is no Man more sensible of his Inability that Way than myself; and

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as it was very strongly urged, I would not omit taking Notice of it ; and I do say, that as it is my Duty to explain the Nature of Facts, and the Circumstances of them, I am resolved always to do it, consistent with my Instructions : I am sure I would not go the least Tittle beyond them, or the Truth : I own that I did say to this Effect ; That I did not think that any Person could have an Intention to go and commit Adultery by Force of Arms ; and I likewise said, (and it is a certain Truth) that when once Persons engage themselves in any Transaction criminal, no Man does, nor can, foresee how far they may go on, especially if interrupted therein : Besides, was it not verifi'd by the Evidence, that the Pistols were brought into the Lady's Room, and laid by him, and the Use of them declared ? If so, is the urging of these Things to be imputed as a Fault in the Counsel, who is entrusted in the Cause ? No, for if he had not done so, he would not have done his Duty, or been true to his Trust.

Having said this, with Regard to what was mention'd against myself, I must beg Leave to take Notice of the Gentlemen's Defence, in order to lessen the Damages. They say, that it appears from several Letters of the Plaintiff, that he had conceiv'd an ill Opinion of his Lady's Conduct at the *Bath*, by Reason of her keeping Company with vile People there, before the Defendant was acquainted with her ; therefore, say they, let these People who seduced her first bear the Burden, as being the Authors of the Plaintiff's Uneasiness and Misfortunes, and excuse the Defendant ; or, at least, don't load him with all the Guilt. I am surpriz'd at this Defence made for him, to the Dishonour of the Lady : How inconsistent is this with the written Agreement, or Engagement, of that noble Lord the Defendant ; who promised *to defend the Lady's Honour to the last, at the Expence of his Blood, Life, and Fortune, against any*

Calumny.

Calumny, Calumniator, or Peril whatsoever? I said before, that he was much mistaken in his Point of Honour, to think that he was bound by it, at so great an Expence, to defend and vindicate Injustice: But I am now more concern'd for the unhappy Lady, when I find that the *Tempter* is become an *Accuser*, which is certainly acting the ill Part; but yet this Use may be drawn from it; it may be a Warning to others, who may be tempted to be seduced afterwards. — Gentlemen, consider the Nature of this Defence and Way of Arguing, and the Consequence of it: It may be, some may be seduced sooner, and others later, to the utter Ruin of Families; so that, if the Plaintiff, according to their Way of arguing, hath not the good Fortune to lay hold on the first Seducer, and make good his Prosecution against him, it will avail him nothing to lay hold on the latter. And suppose there were another concerned in the present Case, before the Defendant, (which we do not admit) will that excuse the Defendant? No, such a Defence is very ill founded, as being contrary to Law, and a great Encouragement to Vice and Immorality.

I think the first of the Plaintiff's Letters to his Lady is dated the 2d of — last; but our Witness gives an Account, that the Acquaintance between the Defendant and the Lady began about the Middle or latter End of — before. [Here the Lord Chief Justice said, *That she fixt it to the latter End of —*] Now, my Lord, because the Plaintiff, in this Letter, takes Notice of the Lady's not behaving herself well at the *Bath*; and because, he says therein, *That he was determin'd to part with her*, and tells her what he would allow her a Year, for her separate Maintenance, therefore they would have it, that he had actually parted; but the Words will bear no such Construction: For it appears thereby, that he had not parted with her, nor settled, nor executed

executed the Terms he proposed ; but this Letter shews, that his Heart was full of Grief and Tenderness towards his Lady and her Reformation ; for he entreats her to shake off her *Bath* Acquaintance, and to be more intimate with her own Relations, who wish'd her well ; and prays, that her future Conduct might be such, as to intitle her to the Applause of her Friends, which certainly included himself, who had a great Affection for her, and an earnest Desire of reclaiming her Conduct : Nor can it be said, that by this Letter, he excluded their Reconciliation together, which might have been brought about by the Intercession of Friends and Relations. It is true, he alarms her of parting with her ; but it appears from the passionate and tender Part of the Letter, that he had not entirely given her up, nor brought himself to a final Resolution of actually parting with her ; there was Room left for Intercession and Reconciliation. And tho' he repeats the same Words, in his second Letter to her, the 7th of the same Month of —, *That he is determin'd to part, whatever the World says about it ;* and remonstrates with her, and says, *that he is as unhappy already as he can be ;* yet, as I said before, these Expressions do not imply, that he had actually parted with her ; for the very Words afterwards shew the contrary : He says, *He knew he was going to subject himself to the Talk of other People, who knew nothing of the Affair ; and that some would blame him, and others her :* And then, after that, he prays for her future better Conduct ; and, indeed, the Tenderness of these Letters shew, that he only came to a Resolution to try, whether the alarming her with a Separation would not reclaim her Conduct : And it could not be expected, after he had charged her with the Cause of his Unhappiness, that he should, immediately upon that, say, *Return, and I will receive you kindly, notwithstanding your former Conduct :* No, that would not have been proper.

I think it was insinuated, that he had not only left her, but that he had taken a House for her at (I), but they did not prove it. [Here the Lord Chief Justice said, *They have not proved it.*] Besides, if he had cast her off, and had not a mind to regard her any more, how came he to take Care about the securing and confining her there? That very Thing shews that he had not cast her off.

Gentlemen, I submit it to my Lord and you, whether or not, in a Crime of this heinous Nature, you ought not only to have a Regard to the great Injury done to the Plaintiff's Family in particular; but also, as it is destructive to all Families in general? And whether there is not also some Regard to be had to the discouraging of Vice and Immorality, and the encouraging of Virtue? I hope I may say this without being charged with aggravating the Crime, or raising the Passions; and therefore I submit it to you, what Satisfaction you shall think proper to make.

Mr. ———, My Lord, I beg your Patience a little. I did not at first propose to insist on the Defendant's Guilt and Punishment; but left them entirely to the Evidence of the Witnesses, and your Consideration; but as the Gentlemen on the other Side have thought fit to take a new Method of Defence, and have, with a great deal of Art, endeavour'd to draw a Veil before your Eyes, that you might not see Things in the Light, or in their true Light; and as I may incur Blame, if I should be altogether silent therein, though there is not much left for me to say, I must therefore beg leave to trespass a little on your Lordship and the Jury's Patience.

And, with Respect to the Guilt of the Defendant, I must say, if the Gentlemen had no Evidence to give in Contradiction to ours, they should not have attempted to defend it. It is true, that the gross Fact is only
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Proved by one Witness; and the Lady must have proceeded to a shameful Degree, indeed, if it could be prov'd by any more; but then it must be considered, that this was sworn to by a Person whom they have not been able to contradict; and you will observe how consistently she speaks to every thing, tho' she stood a long Cross-Examination; nor have they impeached her Character; they have only imputed to Imprudence and Weakness, in agreeing to what the Lady propos'd; which is a plain Mark of the Intimacy between them. Besides, it is a Maxim and Principal in the Law, that if you will have Evidence of Things that pass in bad Places, you must make Use of the People that go there: So that if you are to have Evidence concerning the Lady, you must make Use of her Waiting-maid, and take Notice of what she says, because it is impossible that it should be proved otherwise.

It was said, That it was a very improbable and unlikely Thing, that the Lady would put such great Confidence in this Witness. But have not we proved by several Witnesses, that the Lady had a great Affection for this Woman, spoke well of her, and shew'd a great deal of Kindness towards her, us'd uncommon Familiarity with her, and put great Confidence in her?

It was observed, that, on my Lady and the Defendant's first putting that Question to this Witness, *Whether she could keep a Secret*; she readily said, *Yes*, knew their Meaning, and consented to it without Reluctance; but there would have been no Room for such an Observation, if she had been suffered to go on and acquaint you with the whole Affair as it pass'd; nor is this Witness's ready Compliance to be thought extraordinary, considering what she knew before of the Lady's Affection for the Defendant, and the unseasonable Hours they sat up together.

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As to what was observ'd about her concealing, or denying that she knew any thing of the Transaction, after she was taken into Custody, that does not, in the least, interfere with her Evidence here upon Oath ; and that she should, at first, conceal and deny it, for a while, and not tell it at once, when asked, is no Surprize ; especially as she was not on her Oath, because she might be apprehensive that it would be dangerous for her to discover any Thing about it ; but, at last, on farther Consideration of her Duty, and out of a Regard for her injured Master, she thought proper to discover the whole Transaction upon Oath.

But, as hath been mention'd, the Whole does not rest upon her Evidence, tho' that stands uncontradicted, and likewise her Character unimpeach'd by any Evidence on the other Side ; for you have strong Circumstances of such criminal Familiarity and Intimacy between them, long before that Night, the 13th of — ; for how came the Defendant and the Lady to meet together at the Inn at (H)? Why did his Servant, in the Way, come to meet her, and look into her Coach, and return immediately? And how came she afterwards to meet the Defendant at the same Inn there, and Sup with him alone, and sit up so late by themselves, if there had not been such Intimacy between them? For it is plain, that that was no accidental Meeting, but a fixt one before hand : Would any Lady of Modesty have done so? To sit so many Hours together by themselves, and at such unseasonable Hours too : I would not go over the unseasonable Visits at (I), nor the mid-night Visit there, when the Men Servants were in Bed, and the Lady almost undress'd, and how she dress'd herself again, and came down to him, and ordered the Men-Servants not to be disturb'd ; and entertained him, and sat up with him alone till next Morning, which is confirm'd by the Evidence of other Witnesses, as well as of (Q), who is likewise confirm'd

in other Parts of her Evidence; for it is prov'd, that the Defendant did not come to his Bed at the Inn at (A) that Night, the 13th of —, which he had before-
 spoke, tho' his Servant lay there; nor have they told you of any other Place elsewhere that he lay that Night; which to be sure they would have done, if he had not been with the Lady.

And then his Letters wrote by him to the Lady, after the 13th of —, confirm what (2) says of their Criminal Conversation that Night: In one of them, dated the 22d of the same Month of — last, he says, in Excuse for not coming to see her, [*Another thing which hath prevented me is my not having recovered the INJURY I DID MYSELF, by the last Journey,*] which hath a plain Reference to the Fatigue he underwent that Night, in the Criminal Conversation with the Lady. It was not an Injury that he received; but an Injury that he did himself, that Night. In that Letter he begins and makes his Address to her, thus, [*My Angel*], and concludes thus, [*I long for the Expiration of these next five Months, and then I hope to be with you. Adieu, my Angel*]. And, in the same Letter, he says, [*The greatest Happiness I enjoy in Absence from you, is bearing from you*] and so on; giving the Reason for his not coming from (Aa) to visit her at (I). Is this Language proper to be writ by a Gentleman to a married Lady? That very Letter speaks the Criminal Conversation between them the 13th of —, and which his other Letters to her also confirms: And therefore, with Regard to the Truth of the Fact, nothing can be plainer, nor can a greater Proof be given or required; and to endeavour to make it clearer, would be but like lighting a Candle at Noon-day.

The next Thing I would speak to, is with Regard to the Satisfaction that is due to the injured Gentleman, by Way of Punishment inflicted on the Defendant. The Gentleman who opened for the Defendant,

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Defendant, and, I believe, he spoke the Sentiments of his Heart, told you, *He sympathized, and had a Fellow-feeling with the Plaintiff in his Misery and Affliction*; and, indeed, a Man must be void of Humanity not to sympathize with any one that lies under such domestick Afflictions, which is the most vehement of all others; but more especially when it is the Case of a Gentleman of Fortune, Character and Honour: And that the Plaintiff is such, I believe you all know, who, I must say, married this Lady, not with any View of Money or Fortune, but with a View to be happy with her all his Life; and to have a virtuous and good Mother to those whom he should happen to have, to inherit his Estate after him; for he had a vehement Love for her, as appears from his Letters to her, which the Gentlemen of the other Side have produced; and which certainly must increase his Affliction, as was opened by the Gentleman for the Plaintiff; who, I am sure, spoke his Thoughts; and I will make bold to add, that I do not think it is in the Power of Language to make the Plaintiff's Case more calamitous than it really is.

But what is this that the Gentlemen of the other Side have set up by Way of Defence, in order to extenuate the Defendant's Guilt, and lessen the Damages? That which they offer and produce, is two Letters from the Plaintiff to his Wife; which shew that there is a Conspiracy between the Wife and the Adulterer against the Husband, and is a further Confirmation of their criminal Intimacy; for who gave the Gentlemen these Letters who put them into the Hands of this Defendant? To be sure the Plaintiff's Wife, the Lady L——, for they could have them no other Way; nor have they given you any Account how they came at them; so that here is the Wife, in the Face of the Court, endeavouring to skreen the Adulterer from the Punishment and Satisfaction which the Law inflicts and prescribes.

I was, indeed, at first, before I observed the Conspiracy, very much moved with Compassion for the unhappy Lady, to think that her Virtue was first betrayed by the Defendant, and then her Honour given up by him afterwards, which he promised to defend to the last ; and, by the Way, I must say, that the Defendant hath not acted honourably or consistently with his written Engagement to the Lady, and that it is very surprizing, that he, who *thought himself bound in Honour to defend her to the last with his Blood, Life and Fortune against all Calumnies and Calumniators whatsoever*, should here, by his Counsel, who appear in his Place and Stead, be the first Calumniator ; for they have pleaded, that she was a Prostitute, or an abandoned Woman, before the Defendant had any Acquaintance with her ; and that he was not the first Seducer.

The two Letters wrote by the Plaintiff to his Lady, and produced by the other Side, are dated one the 2d and the other the 7th of — last ; and they have been read to you ; and, I believe, there was no one that heard them read, but what was moved by them ; for, in them, there is the Picture of the Affection and Tendernefs that he had for his Lady, and the Calamity he was then groaning under. But it was said, by the Gentlemen for the Defendant, that the Plaintiff's Uneasiness and Affliction appears, by these Letters, not to rise from other Defendant's Acquaintance with his Wife, but from People's Acquaintance before his ; and, therefore, there was no Reason to burden him with it : But I beg Leave to say, that what they alledge does not follow from these Letters ; for the first Letter is dated the 2d of — last ; and the first Witness fixes the Defendant and the Lady's Acquaintance to have begun about the latter End of — before that ; so that his Acquaintance with her might be one Cause of his Uneasiness ; for there is no Proof before you to the contrary, nor any other Proof but what they had in
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their Keeping, and which they think proper to shew: And there may be other Proof of it in their Custody, which they have not produced. However, observe his Tenderness and Affection for her in this Letter; when he is acquainting her of his intended Separation, he freely and generously offers her 800*l.* a Year, besides her Jewels, which, he says, was at her Service, and gives her his best Advice, and prays for her Health and Happiness. And give me Leave to to say, that tho' he writes to her, *That he was resolved to part*, yet there are such Marks of Affection and Tenderness towards her in these Letters, that there was Room left for bringing about a Reconciliation betwixt him and his Lady, by the Interposition and Intercession of Friends and Relations, with whom he desires her, in one of the Letters, *To be more intimate, because they wish her well*: And shall the Defendant, at such a Time as this, when he knew there were Differences between the Plaintiff and his Lady, and that he had some Jealousy in him; I say, shall he, at such a Time as this, step in and widen the Breach, by his indecent Visits at her House in (*I*), and other Places, and by his sitting up with her alone at such unseasonable Hours, and by his betraying and seducing her at last? That the Defendant did these Things when the Plaintiff had Uneasiness and Jealousy in his Mind, is so far from being an Extenuation of his Guilt, that it is really a great Aggravation of it; because, by his so doing, he hath now made the Breach irreparable, and their Reconciliation impossible, which otherwise might have been made up by the Intercession of Friends and Relations, as I said before: Besides, with Regard to the unhappy Lady herself, it was really taking the Advantage of her, by attacking her in her Husband's Absence, when she was, no Doubt, under Concern at his Uneasiness and Jealousy, and at his Proposals of parting with her; for if he had not attacked her, under such disadvantageous Circumstances,

stances, he could not so easily have ruin'd her ; because she would have been more upon her Guard. And for them to say, or insinuate, because the Plaintiff had some Difference with his Lady, and left her for a little while, and went to his Country-seat, and sent her these Letters, that therefore any Man may have criminal Conversation with her in his Absence, would be of very dangerous and destructive Consequence ; therefore, I submit it to your Lordship, and you Gentlemen, that what they have offered, in order to extenuate the Defendant's Guilt, and lessen the Damages, does rather serve to aggravate the one and heighten the other.

Then it was said, that this present Action was brought by the Plaintiff, for Damages sustained by him, on Account of his being deprived of the Comfort and Society of his Wife, which, they say, cannot be great, because he had, in some Measure, deprived himself thereof before : But I beg Leave to say, that the Action is likewise brought for criminal Conversation with her, which is such an Injury done to the Plaintiff, that it is impossible to estimate the Damages. What Satisfaction can be made to a Husband, who hath lost the Comfort of his Wife, whom he loved to Madness, as one of the Letters mention ? or what Satisfaction can be made for having a spurious Issue brought into his Family, and for being forced to expose himself and Family here, in the Face of a publick Court, and to have them in the Mouths of the whole World, in order to do himself and Family Justice ? These are Things which cannot admit of Satisfaction : Indeed, it is for our Satisfaction that we bring the Action here, because the Plaintiff could not possibly get rid of the Lady, who hath so greatly injured him ; and, I am afraid, that without a great deal of more Trouble and Expence, he will not get rid of her spurious Issue from inheriting his Estate. Therefore, I say, that it is impossible for the Defendant to make him Satisfaction

tisfaction ; for let any Gentleman here but make it his own Case, which I believe he would not for the *Indies*, and then let him judge whether sufficient Satisfaction can be made : Besides, the Damages here are not given, in Law, by Way of Satisfaction or Compensation to the Party injured, that being impossible, as I said before, but they are given as a Punishment inflicted on the Defendant, and for the Sake of the Publick, and for Example's Sake, in order to restrain others from committing such a heinous and injurious Offence, which introduces unspeakable Afflictions into private Families, and great Inconveniencies into the World. I am sure that you all know, that this Crime of Adultery was thought so injurious among the *Jews*, that, by the Law of *Moses*, it was ordered to be punished with Death ; and, indeed, the *Roman Law*, even after the planting of Christianity, ordered the same Punishment for that Crime ; but this is not the Punishment that is inflicted by our Law, which only allows Damages to be given to the Husband, by the Defendant, by Way of Punishment.

And as to their saying, that the Plaintiff had in some Measure lost the Comfort of his Wife before that, by Reason of the Difference between them, I think I have fully answered that already, and shewn, that his attacking her, at that Time, is rather an Aggravation than Extenuation of his Guilt.

Another Thing offered to extenuate the Guilt and Damages was, the Defendant's Circumstances ; they say, that he is a younger Brother of a very great and noble Family, and hath the Honour to command one of his Majesty's Ships. As to that, this will not prove what his Circumstances are ; besides, this can be no Excuse for the Defendant, though his Circumstances were meaner, and the Injury is the same to the Plaintiff, whether it was done to him by one of an opulent Fortune, or by one of none at all ; for

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the Circumstances of the Person does not alter the Nature or Punishment of the Crime ; nor hath the Meanness of the Offender ever had any Weight with the Jury ; for it is very well known, that a Jury, in order to punish no greater Person than a Footman, and to make him an Example to others, gave the Plaintiff 5000*l.* Damages, as a Punishment inflicted on the Footman for lying with his Mistress, who must first have encouraged him, before he could have attempted it : And therefore I submit it to you, whether that Case of the Footman was not more favourable than this ?

There was another Thing mention'd, for which I am sorry, because it is treating the afflicted and unhappy Gentleman with Ridicule, which is inhumane. It was said, to this Effect, that you should find a Verdict for the Defendant, which would be the best Damages for the Plaintiff ; because it would, in a great Measure, clear his Lady's Character. To which I answer, God forbid : It would be very hard, indeed, for the Plaintiff to see himself injured in the most tender Part of his Property, and, at the same Time, to be denied the Satisfaction that the Law allows ; but we are in no Doubt of your doing the Plaintiff Justice, and I submit it to you, whether that which hath been offered for the Defendant, is not rather an Aggravation, than an Extenuation of his Guilt. I beg Pardon for trespassing so much on your Lordship and the Gentlemen of the Jury's Patience.

Then the Lord Chief Justice summ'd up the Evidence on both Sides, (as the Counsel open'd), with their Arguments. Afterwards the Jury went out, and brought in a Verdict for the Plaintiff, allowing him 5000*l.* Damages, and 40*s.* Costs.